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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/711,791
Filing Date: October 05, 2004
Appellant(s): SRIVASTAVA, RAHUL

_____
Narendra Reddy Thappeta
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 8, 2008 and the supplemental

appeal brief filed February 2, 2009 appealing from the Office action mailed July 10,

2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

2004/0205567	NIELSEN	10-2004
2003/0046317	CSERI ET AL.	3-2003
2004/0261019	IMAMURA ET AL	12-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The claimed invention (as claimed in claim 49) is directed to non-statutory subject matter.

In regard to independent claim 49, claim 49 recites in pertinent part "A digital processing system...". However, the instant claim language does not specify that the claimed invention includes hardware. As such, the language of the claim merely describes a computer program per se. This raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine, which would result in a practical application producing a concrete, useful and tangible result to form the basis of statutory subject matter under 35 USC 101.

Claims 1-9, 12-29, 41-45, 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (hereinafter Nielsen) PG Pub 2004/0205567, in view of Cseri et al. (hereinafter Cseri), U.S. PG Pub. No. US 2003/0046317 filed 4/19/2001.

In regard to independent claims 1, 12, 21, 47, 49, Nielsen discloses a method
of parsing a data file (an XML markup language file) typically containing a plurality of
data elements (tags, etc.) and typically parsed via a parser (Nielsen Abstract).

Nielsen discloses receiving an XML test file for analysis inasmuch as files of said
type are typically assigned file identifiers (i.e. a filename) so as to be identified by
Nielsen's invention (Nielsen Abstract, paragraph [0031]).

Nielsen discloses parsing an XML file into a DOM tree, and each attribute or
node in said tree is analyzed accordingly, each said node reasonably interpreted as
data elements (or portion identifiers) contained within a plurality of data elements
(nodes) (Nielsen paragraphs [0058], [0061], [0062]).

Nielsen discloses determining a replacement for an element node, said
replacement utilizing XPath for replacing a portion of the document (i.e. a portion
identifier) (Nielsen paragraphs [0052], [0062]).

Nielsen discloses an "injection mechanism" whereby a node adder for adding a
node to a "location" in a DOM tree, specified by the location of the insertion (markup
language) tags (Nielsen paragraph [0040]). It is respectfully noted that a typical
hierarchical tree (i.e. a DOM tree) will show nodes in relative position to one another
(see also Nielsen paragraphs [0050], [0069]).

Nielsen discloses the above analysis and replacement methods conducted
during runtime (using an application) (Nielsen Abstract), therefore data (i.e. portion
identifiers, data elements, etc.) are provided accordingly.

Nielsen does not specifically teach an instruction to parse from an application

implemented external to said parser. However, Cseri teaches separation of an XML

formatting module (transmitting device), and an XML parser (receiving device) (see

Cseri, at least Figures 2, 3A, 3B). It would have been obvious to one of ordinary skill in

the art at the time of the invention to apply Cseri to Nielsen, providing Nielsen the

benefit of external parsing therefore requiring less of Nielsen's own resources.

In regard to dependent claims 2, 13, 22, Nielsen discloses XPath (Nielsen

paragraph [0052]).

In regard to dependent claims 41-45, Nielsen discloses parsing an XML file

into a DOM tree, and each attribute or node in said tree is analyzed accordingly.

(Nielsen paragraphs [0058], [0061], [0062]). It is noted that trees are typically traversed

in node by node fashion. It is additionally noted that since a DOM tree is hierarchically

based, portion identifiers are typically referenced based on a presented hierarchy in

step-wise traversal.

In regard to dependent claim 48, Nielsen discloses parsing an XML file into a

DOM tree, and each attribute or node in said tree is analyzed accordingly. (Nielsen

paragraphs [0058], [0061], [0062]). It is noted that trees are typically traversed in node

by node fashion It is additionally noted that since a DOM tree is hierarchically based, a

hierarchical path is present, originating at a root element. DOM trees are typically

created and parsed in a top-down fashion (i.e. beginning of a file onward).

In regard to dependent claim 3-5, 14-16, 23-25, Nielsen does not specifically

teach APIs, procedure calls, and event based parsers. However, Cseri teaches a

method of incorporating binary formatting into XML utilizing parsing of an XML file into a

DOM tree, along with XPath (Cseri Abstract, paragraph [0028]). Cseri teaches SAX,

which is a simple API for XML, which is event based and typically comprising one or

more procedure calls (Cseri paragraph [0028]). It would have been obvious to one of

ordinary skill in the art at the time of the invention to apply Cseri to Nielsen, providing

Nielsen the benefit of decreasing parsing time utilizing at least in part APIs, SAX, etc.

In regard to dependent claims 6-9, 17-19, 26-29, said claims incorporate

substantially similar subject matter as claimed in claims 1, 3, 12, 14, 21, 23, and in

further view of the following, is rejected along the same rationale.

Nielsen does not specifically teach object oriented parsing. However, Cseri teaches

object oriented programming (Cseri paragraph [0157]). It would have been obvious to

one of ordinary skill in the art at the time of the invention to apply Cseri to Nielsen,

providing Nielsen the benefit of object oriented programming for multiple instantiation

etc.

Nielsen teaches a find request - an abbreviated version, and a get request - a

non-abbreviated version of an object (Nielsen paragraph [0045]).

Claims 10-11, 30-31 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Nielsen and Cseri as applied to claims 3, 14, 23, 34 above, and

further in view of Imamura et al. (hereinafter Imamura), U.S. PG Pub. No. US

2004/0261019 filed 4/1/2004.

In regard to dependent claims 10-11, 30-31, Nielsen does not specifically teach push parsing. However, Imamura teaches parsing in association with XPath and pushing (Imamura paragraph [0160]). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Imamura to Nielsen, providing Nielsen the benefit of pushing for more efficient parsing.

(10) Response to Argument

Regarding appellant's arguments on pages 7-8, in reference to the rejection of claim 49 as being non-statutory subject matter under 35 U.S.C. 101, the examiner maintains that the rejection is proper. The claim states, "A digital processing system comprising..." which does not preclude the claim from being interpreted as merely software. In addition to this, the limitations that follow consist of only recitations of software components. Thus, the claim is a system existing as only pieces of software as it is currently claimed. The examiner is forced to take the broadest most reasonable interpretation of the invention in light of the specification, which forces the examiner to interpret claim 49 as existing as merely software. Thus, the rejection is proper and must be maintained.

Regarding appellant's arguments on pages 12-13, in reference to the rejection of claim 1 and whether the steps being performed are implemented within a parser, the examiner maintains that the rejection is proper. In response to appellant's arguments, the recitation "...said method being implemented in a parser..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is

generally not accorded any patentable weight where it merely recites the purpose of a process or *the intended use of a structure*, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In addition to this, the Nielsen reference actually dictates that the steps of receiving data file/identifier, reading the data file (retrieving the first data element) and generating an internal structure of the data file (determining a portion identifier of the first data element – XPath of the DOM representation) are all performed from within the parser (pages 3-4, paragraph 0051 of Nielsen). Cseri teaches that providing in association the portion identifier and the first data element to an external application is performed by the parser (Figures 2, 3A, and 3B of Cseri). Regardless of the fact that the recitation "…said method being implemented in a parser…" should be given no patentable weight, the combination of the teachings of Nielsen with that of Cseri actually teaches that the steps are performed by a parser, thus even if the recitation was given weight the rejection would still be proper and must be maintained.

Regarding appellant's arguments on pages 13-15, in reference to the rejection of claim 1 and whether the portion identifier is provided in association to an external application by the parser, the examiner maintains that the rejection is proper. The appellant appears to argue that the Nielsen reference does not teach the limitation in question, however it is extremely important to note that one cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The limitation in question is taught by the Cseri reference, which teaches that the parser itself transmits the data elements and identifier of the data elements directly to an external application (Figures 2, 3A, 3B and ... of Cseri). This teachings in combination with the teachings of Nielsen is the reason the examiner maintains that the invention as currently claimed is obvious in view of the prior art, and thus the rejection is proper and must be maintained.

Regarding appellant's arguments on page 15, in reference to the rejection of claim 1 and whether the first data element is retrieved from the data file, the examiner maintains that the rejection is proper. The appellant appears to argue that the XPath reference of Nielsen does not point to a data element retrieved from the data file, which is incorrect. Nielsen teaches that an XML file (test suite file) is received by the parser and used to generate a DOM representation (pages 3-4, paragraph 0051 of Nielsen). A DOM file by definition is node based representation of an XML file, thus each and every DOM node corresponds and represents a data element from the original XML file (page 5, paragraph 0069 of Nielsen). XPath is used as a referencing/addressing technology for the DOM representation of the XML file by Nielsen as stated, "One aspect of the present invention is the use of a referencing technology, such as XPath for referencing a portion of the same document (i.e., a portion internal to the document)" (page 4, paragraph 0052 of Nielsen). The appellant appears to argue that the XPath does not point to data element retrieved from the data file, however based on the statement

provided from the Nielsen reference, it is very clearly stated that XPath is "for reference

a portion of the same document (i.e., a portion internal to the document)" which directly

contradicts the appellant's position. Thus, because the XPath is clearly used to

reference portions of the XML document (data elements retrieved from the data file) it is

clear that the rejection is proper and must be maintained.

Regarding appellant's arguments on page 16, in reference to the rejection of

claim 5 and whether the parser is an event based parser, the examiner maintains that

the rejection is proper. The appellant argues that the parser of Nielsen is not an event-

based parser, however it is important to note that the examiner has already

acknowledged this fact and explained how the teachings of the Cseri reference in

combination with the Nielsen reference have rendered the claimed limitation obvious.

At no point does the appellant combat the teachings of the Cseri reference, which are

the basis for the obviousness rejection of claim 5. Rather, the appellant appears to

argue that the Nielsen reference does not teach the limitation and the combination

would render the Nielsen reference unusable. Again, it is important to note that one

cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.

1986). The argument that the combination of the references would render the teachings

of Nielsen unusable is completely invalid. The Cseri reference not only teaches the use

of a SAX parser (event based parser), but also teaches that in XML technologies it is

notoriously well-known to use both event based parsers and tree-based parsers (DOM

parsers) (page 3, paragraphs 0028-0029 of Cseri). Cseri discloses that the technologies of DOM, SAX, XPath, and XPointers are all notoriously well-known ways of implementing XML applications (page 3, paragraph 0029 of Cseri). Thus, the technologies presented are clearly notoriously well-known in the art and by definition interchangeable by one of ordinary skill in the art at the time the invention was made. For these reasons, the rejection is clearly proper and must be maintained.

Regarding appellant's arguments on pages 16-17, in reference to the rejection of claim 47 and whether the first data element exists in the data file prior to receiving of the data file, the examiner maintains that the rejection is proper. Nielsen teaches that an XML file (test suite file) is received by the parser and used to generate a DOM representation (pages 3-4, paragraph 0051 of Nielsen). A DOM file by definition is node based representation of an XML file, thus each and every DOM node corresponds and represents a data element from the original XML file, the elements being a part of the file before the file was received (page 3-5, paragraphs 0051 and 0069 of Nielsen). It is unclear to the examiner how the teachings of Nielsen could be interpreted in any other way. The XML file itself must contain data elements prior to being received otherwise there would be absolutely no information for the system to process, and thus no functionality. It remains unclear to the examiner how the language contained in claim 47 is any different from the teachings of the prior art as shown in the rejections applied. Thus, the rejection remains proper and must be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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April 24, 2009

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